

subsidy under current regulatory practice must be considered in a comparative light. Moreover, short-term losses, such as customer confusion, should not be interpreted as long-term losses. Our primary goal with respect to consumers should be to educate them to the benefits of a system that is not really as foreign to them as they may at first believe.

A final point is worth noting. The practices of a state regulatory commission are defined by law and custom. But they are not conducted in a vacuum, and this Commission has played an exemplary role in helping to shape the national legal and policy framework within which the Federal Communications Commission, which also has congressionally mandated jurisdiction over regulation of common carriers, operates. But our role has been and should continue to be defined by priorities that derive from our fundamental jurisdiction and legal responsibilities, not, tempting as it may be, from more generalist concerns over which we have no authority.

This will be challenge enough, for the relevant environment is far from static, and even as this opinion is being written, the U.S. Congress has undertaken to explore once again the dimensions of its role in setting national policy. Among the issues it is considering legislating on are the restrictions against entering certain lines of business imposed on the Bell Operating Companies by the

Modification of Final Judgment in 1982. The New York Department of Public Service commented formally in the first triennial review of these restrictions, and is expected to comment once again in the second triennial review in 1990. I personally favor removal of the bans on information service content and manufacturing under a federal initiative allowing states to submit plans for control of monopoly abuses. Recognizing that this view may run into all sorts of obstacles, legal and political, and may not necessarily be supported by the Commission as a whole, I am sure all will agree that we must take note of and participate vigorously in this great national debate, which promises to radically change the context of state regulation. It is the states that have and should retain the major responsibility for implementing policy changes that primarily affect the bottleneck--such as Open Network Architecture, the functional prerequisite for a full market test of the possibility of vigorous competition in information services.

This opinion, juxtaposed with previous orders enumerated above, our recent ONA order that invites enhanced service providers to seek acceleration of the unbundling planned by New York Telephone Company, our ISDN order, and our comments and filings before the FCC and the courts, comprise a holistic and anticipatory approach to regulation in this vital and essential communications arena, which, I trust, will not end here.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 29469 - Proceeding on Motion of the Commission to Review
Regulatory Policies for Segments of the
Telecommunications Industry Subject to Competition.

ELI M. NOAM, Commissioner, Concurring:

I am pleased with our decision in this case, which should enhance competition in the provision of telecommunications services and benefit the people and economy of New York. Opening the market to new entrants and reducing regulatory restrictions should continue to be the Commission's policy direction, and hopefully in a fast-paced process. Having now lowered barriers to competition and encouraged network pluralism, we should focus on the next set of issues, continuing a process in which we are already engaged. Beyond the traditional and important goals that we must continue to pursue, such as consumer protection, universal service, and service quality, we must address new issues which include:

1. Telecommunications as economic competitiveness policy.

The global competitiveness of U.S. and New York economy are directly related to the state of telecommunications. Other nations and financial centers are actively using telecommunications as a strategic tool. Given foreign firms' frequent advantages in mass production manufacturing, the only way to compete is to stay ahead in information content, process intelligence, and innovation. The upgrade of the network system is hence of major importance to the economic efficiency and

growth of information intensive industries. ISDN, broadband networks, fiber in the loop, and intelligence in the network are building blocks in this upgrade. We should encourage experimentation, innovation, infrastructure investments, and a more rapid pace of planning. Our ISDN policy initiative and incentive-based regulation are examples.

2. Treatment of telephone carriers in their expanding capacity as mass media providers. As networks provide pathways for mass announcement services and move technologically towards video transmission, it becomes essential to clarify their status. Should they operate as publishers and select programs under their own responsibility, or as common carriers that must be neutral as to lawful content, use, and users? Traditionally, common carrier principles have governed telephony, in contrast to cable television or broadcasting, and have served well as a foundation for an expansion of the telephone's scope and use, while insulating carriers from legal liability and threats by economic and political pressure groups. It would take strong arguments to overturn this principle for video transmission services. The Commission should, in the near future, deal with these issues.

3. Protection of interconnection and access. In coming years policy makers must structure ways in which network interconnection is granted, defined, priced, and technically

harmonized to provide mutual interaction among the increasingly large number of members of the network family. The open network architecture concept is a step in that direction, and one in which state regulators should play a constructive role. The PSC, in its own ONA proceeding, has begun to deal with this set of issues, with the aim of defining a constructive state policy that is not purely jurisdictional in focus.

4. Protection of a balance between technical standardization and diversity. As the number of members of the network family and their sophistication increases, the need for standards and protocols becomes ever more important if we wish to avoid a technical fragmentation of the American network just at a time when Europe is moving in the opposite direction, and just when our technical competitiveness is challenged as never before in this century. There is need for a system in which competitive diversity can be exercised within a defined technical compatibility. There is a need for government to assure-- though not necessarily set -- timely standards, protocols, and definitions, in collaboration with industry. Since there is a strong need for national compatibility, such leadership must be exercised in Washington, but in consultation with the states where local service is affected. In particular, it is necessary is to establish a blueprint for a modular concept of the network system, with well-defined interface points and standards. This would enhance compatibility, competitiveness, and flexibility in

structuring new services by local exchange carriers, other network providers, manufacturers and users. It is necessary for a state like New York to establish expertise in this field and to encourage the federal level of government to become more active in standards issues than in the past.

5. Protection of the viability of the core network and establishment of alternative mechanisms of social support. The emerging pluralistic network system makes it increasingly difficult to maintain traditional internal transfers from one class of users to another. This does not spell the end of transfers as such. There are still reasons to support services for rural areas, the infirm, or for the truly needy. Keeping such subscribers on the network, in addition to meeting standards of fairness, also benefits the rest of society by providing greater value to its telephone service. A lifeline program such as the one established by the PSC permits a better targeting of the subsidy than in the past, and creates the ability to take greater deregulatory risks by providing a social safety net. Yet support should not come solely from the subscribers to the local exchange companies. A universal service fund could provide a mechanism to deal with this issue.

6. The prevention of oligopolistic behavior and of cyclical instability. A pluralistic network system is likely to have excess capacity. Given low marginal cost and high fixed costs,

competition may cause either cyclical instability and/or oligopolistic price coordination by firms. This is most likely where the number of competitors is very small, such as in the provision of cellular telephone network services. It is therefore important for regulators, beyond being vigilant to instances of price collusion, to foster potential alternatives such as resellers which would reduce oligopolistic temptations.

7. Establishment of policy to match the global scope of networks. As national and state governments lower barriers in telecommunications, the emerging network system will not stop at the national frontier. Telecommunications will transcend the territorial concept and specialized international networks will become increasingly important. As the cost of international transmission drops dramatically and as the volume of international transaction rises, no country, and certainly no single U.S. state, can be a regulatory island anymore. The challenge for New York's regulation is how to frame rules in such a complex international environment, how to develop an understanding for the broader environment of telecommunications, and how to participate in an already complex process of international telecommunications policy. For a state with as vast an international level of activities as New York, it is imperative to ensure that policies in the international field maintain or enhance the role of New York as an international

marketplace and center for the new types of international networks.

All of these issues will, no doubt, lead to significant regulatory controversies and will occupy us for a long time. None of these tasks is beyond our grasp in terms of complexity or political feasibility. But they require us to take the next steps in dealing with the new issues of a pluralistic network environment.